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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 731

FOREIGN TRADE MANAGEMENT COMPANY,
INCORPORATED,

Petitioner,

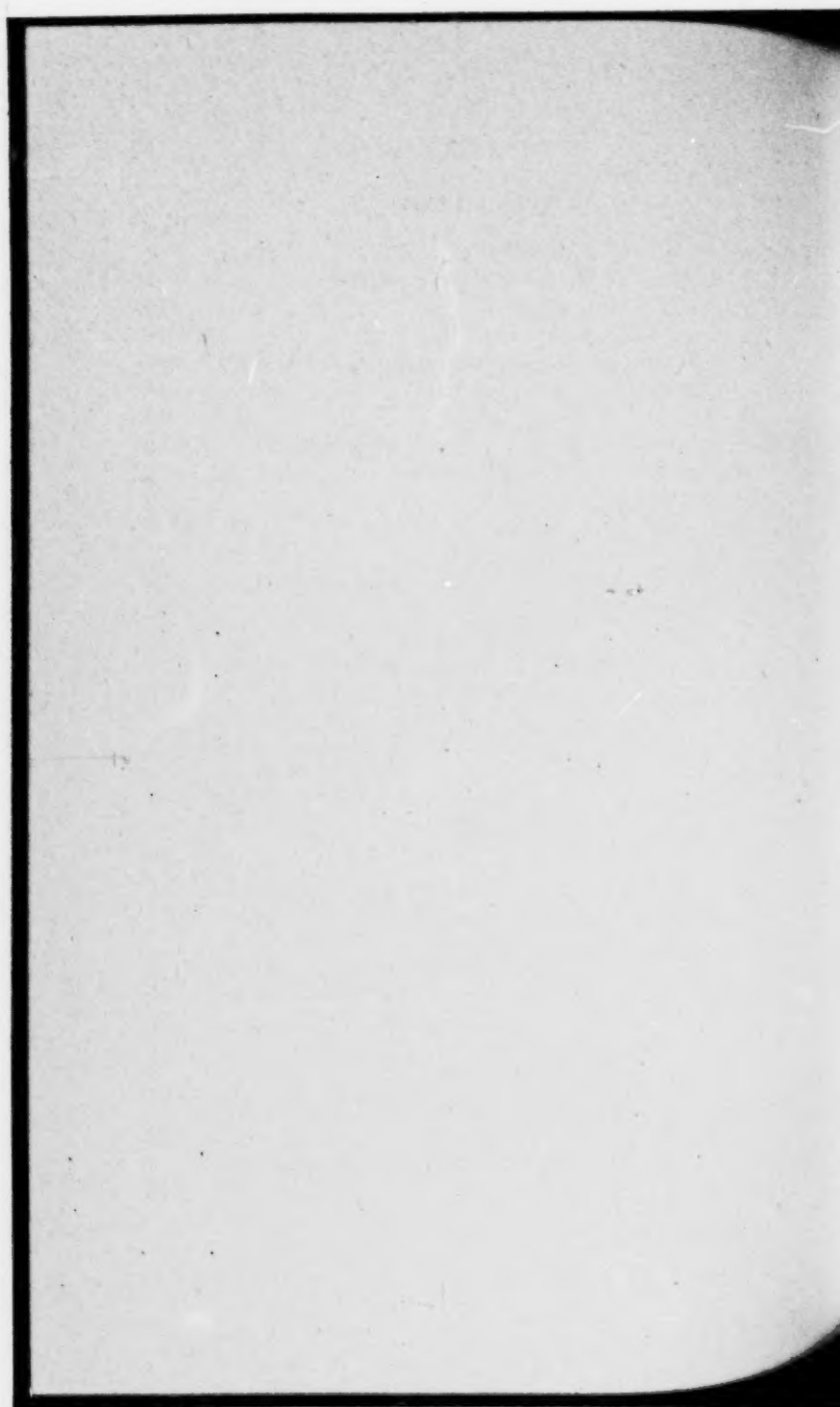
vs.

THE UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS AND BRIEF
IN SUPPORT THEREOF

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**FOREIGN TRADE MANAGEMENT COMPANY,
INCORPORATED,**

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Supreme Court of the United States:

The petition of Foreign Trade Management Company, Incorporated, a corporation, respectfully shows to this Honorable Court:

I

Statement of the Matter Involved

This case involves the question as to whether or not the respondent acquired 840 long tons of petitioner's copra by the exercise of coercive power upon petitioner and by coercing the holder of a lien upon the copra to go through the forms of a sale thereof to the Commodity Credit Corpo-

ration by which that corporation acquired the copra for an inadequate price; and if the respondent did acquire petitioner's copra by the exercise of coercion may the petitioner recover in a suit in the Court of Claims an amount which will constitute just compensation for the copra.

In August, 1941, petitioner purchased in Portuguese East Africa 2500 long tons of kiln-dried copra (Fdg. 2, R. 6*). Approximately 1460 long tons of this copra were shipped from ports in East Africa on the *S. S. Hawaiian* on or about April 8, 1942, and arrived in New York on or about May 19, 1942; 630 long tons were shipped on the *S. S. Excello*, arriving in New York on June 10, 1942; 210 long tons on the *S. S. Puerto Rican*, arriving in New York on June 29, 1942; and 200 long tons were shipped on another vessel which was sunk (Fdg. 2, R. 6).

All of this copra was shipped "in transit" for sale to South American customers of the petitioner (Fdg. 2, R. 6).

The 840 long tons which were the cargoes of the *S. S. Excello* and the *S. S. Puerto Rican* is the copra involved in this case.

Because this copra was destined for purchasers in Colombia and Venezuela, the diplomatic representative of those countries in Washington used their efforts to assist petitioner to secure shipping space for the copra (Plaintiff's Exhibits 5 and 6, R. 7-9). The Co-ordinator of Inter-American Affairs in the Office of Emergency Management for the Executive Office of the President also used his efforts to obtain the shipping space (Plaintiff's Exhibit 7, 1 Tr. 6).

As a result of these efforts, the United States Maritime Commission allocated to the petitioner shipping space for 2500 long tons. Thereafter the United States Maritime

* The letter "R" followed by a number refers to a page in the printed record. The letters "1 Tr." followed by a number refer to the volume and page of the transcript which was not printed in accordance with stipulation of the parties.

Commission instructed the shipping companies to unload the cargoes at Trinidad, British West Indies, for reshipment to South America (1 Tr. 11-12). Later, at the request of the Board of Economic Warfare, the arrangements for unloading at Trinidad were abandoned, and the steamship companies were instructed by the United States Maritime Commission to bring the cargoes to New York (1 Tr. 11-12). These instructions were given because the Board of Economic Warfare desired to requisition the copra (Plaintiff's Exhibit 53, 1 Tr. 19-24).

When the 1460 long tons of copra on the *S. S. Hawaiian* arrived in New York, it was unloaded and shipped by railroad to New Orleans for the purpose of exportation from that port to South American customers of the petitioner under contracts previously entered into (Fdg. 2, R. 6). This copra was duly requisitioned by the respondent under requisitions issued July 17, and July 31, 1942 (Fdg. 4, R. 7), and the sufficiency of the award of the respondent for this copra is the subject matter of Case No. 730 in this Court.

When the copra on the *S. S. Excello* and the *S. S. Puerto Rican*, amounting to 840 long tons, arrived, it was not requisitioned by the respondent (Fdg. 4, R. 7). These 840 long tons were subject to liens in favor of American Union Transport, Inc., New York, to secure the payment of moneys advanced by that company for a portion of the purchase price of the copra and for freight, insurance, and other charges incident to the purchase (Fdg. 5, R. 7).

Upon arrival in New York the 840 long tons were unloaded into lighters in New York Harbor.

On June 16, 1942, Commodity Credit Corporation had endeavored to purchase from the petitioner both this copra and the copra which was the cargo of the *S. S. Hawaiian* at \$106.25 per long ton, but petitioner refused the offer because of its commitment to the South American customers as well

as because of the inadequacy of the price (Plaintiff's Exhibits 63 and 64).

Petitioner at the time it arranged for the shipment of the 2500 long tons of copra from Portuguese East Africa had export licenses from the Board of Economic Warfare permitting it to export 5000 long tons to South America (1 Tr. 14-15), but on April 10, 1942, the Board of Economic Warfare by general order rescinded all export licenses which had been in effect for more than six months. This left plaintiff with export licenses for the exportation of 1050 long tons (1 Tr. 14-15). These remaining licenses were cancelled when licenses were issued to petitioner on June 5, 1942, to permit the exportation of 1460 long tons which arrived on the *S. S. Hawaiian*. These licenses to export the 1460 long tons were cancelled shortly before that copra was requisitioned (R. 20).

These circumstances left the petitioner with no licenses permitting it to export the 840 tons.

On August 13, 1942, the plaintiff wrote to the Board of Economic Warfare calling attention to the fact that it had requisitioned the 1460 long tons, the *Hawaiian* cargo, but that it had not requisitioned the 840 long tons. Plaintiff called attention to the fact that the 840 long tons had been on lighters since their discharge from the vessel on June 29, 1942, and that heavy expenses for demurrage, insurance and banking charges were accumulating and were a complete waste. Plaintiff requested that the 840 long tons either be requisitioned to save further expense and deterioration or that it be permitted to submit new applications for export licenses to permit it to export the copra to Colombia and Venezuela (Fdg. 6, R. 8).

Again on August 17, 1942, plaintiff wrote to the Board of Economic Warfare directing its attention to the situation as to the 840 long tons and stating that it was under contract to sell the copra to South American countries, that the

cost to the plaintiff of the copra was far in excess of the price the Government was willing to pay, and that it was impossible to sell the copra in a domestic market without incurring a heavy loss. Plaintiff again called attention to its request in its letter of August 13, *supra*, that the Board either authorize the plaintiff to ship the copra to South America or that the 840 tons be requisitioned without further delay which was causing daily heavy expenses and deterioration (Fdg. 7, R. 9).

On August 6, 1942, American Union Transport, Inc., the lienor, wrote the Board of Economic Warfare, stating its interest in the copra and asked for an early determination as to defendant's intentions in regard to requisitioning it in view of the large daily charges accumulating against it (Fdg. 8, R. 10-11).

American Union Transport, Inc., the lienor, received no reply to its letter of August 6, 1942, and on August 12, 1942, M. M. Holzer, its president, went to Washington and conferred with the Head of the Requisitioning Division of the Board of Economic Warfare and was told by that official that the 840 long tons of copra constituting the cargoes of the *S. S. Puerto Rican* and *S. S. Excello* would not be requisitioned and could be sold in private market (Fdg. 9, R. 11).

American Union Transport, Inc., thought that the importation of this copra was governed by General Importation Order M-63, issued by the War Production Board, and accordingly reported its importation (Fdg. 10, R. 11-12), and filed an application with that Board for authorization to contract for or arrange for the importation of the copra (Plaintiff's Exhibits 85, 86, and 87).

General Imports Order M-63, provided that no strategic material, which included copra, could be imported by any person other than specifically designated governmental agencies, except as expressly permitted on the written au-

thorization of the Director of Priorities of the Office of Production Management (later War Production Board). The uses to which materials, including copra, could be put were drastically limited, curtailed, and restricted (Fdg. 10, R. 11-12).

On August 26, 1942, American Union Transport, Inc., telegraphed the War Production Board as follows (Fdg. 11, R. 12).

"Our letter August twentieth regarding disposition 845 tons copra Ex Steamers Excello and Puerto Rican is unanswered. We respectfully urge quick action on your part to avoid further accumulation charges which are about \$115 daily."

On August 29, 1942, the War Production Board, which was authorized under M-63 to permit importation of the copra and disposition in domestic markets (Fdg. 10, R. 11-12), telegraphed American Union Transport, Inc., as follows (Fdg. 12, R. 12).

"Reference your letter August 20 regarding disposition copra Ex Steamers Excello and Puerto Rican Stop. This matter has been referred to *Requisitioning Division of Board of Economic Warfare* Stop." (Italics supplied)

On August 31, 1942, American Union Transport, Inc., telegraphed Lt. Colonel Paul H. McMurray of the Requisitioning Division of the Board of Economic Warfare as follows (Fdg. 13, R. 12-13):

"During my visit on August 12 in connection with requisitioned copra BEW 22 [copra involved in the *S. S. Hawaiian* shipment] you mentioned that we could sell in domestic market nonrequisitioned 845 tons copra Ex Steamers Excello and Puerto Rican because those were not requisitioned Stop. Following this suggestion we submitted August 20 to WPB Report 222 C re-

requesting authorization to sell Stop. In reply just received from Mr. J. Churchill Owen WPB wire reading Quote Reference your letter August 20 regarding disposition copra Ex Steamers Excello and Puerto Rican Stop. This matter has been referred to Requisitioning Division of Board of Economic Warfare Unquote. We therefore would thank you for immediate authorization for sale in domestic market because daily expenses of one hundred fifteen dollars since June 10 and 29, respectively are just wasted and don't do anyone any good and unnecessarily diminish value of lien held by us and Chemical Bank & Trust Company as basis for financing."

No reply to this telegram was received and representatives of the bank, which had lent the money to finance the purchase of the copra, the bank's attorney, Holzer, the president of American Union Transport, and his attorney went to Washington. There they met with Colonel Kerr, Head of the Export License Division of the Board of Economic Warfare, and Colonel Ziegler, who was an official of the Board of Economic Warfare, and discussed the question as to whether or not a private sale of the copra could be made. Ziegler told them that he could see no objection to a private sale, that there was no ceiling price, and that he knew of no reason why the copra could not be sold. As a result of this discussion the final ruling was that the merchandise could be sold in the open market, (Fdg. 14, R. 13).

Thereafter, Holzer returned to New York and he and plaintiff communicated with several companies, one of them being Procter & Gamble, which wrote plaintiff as follows (Plaintiff's Exhibit 81, 1 Tr. 34):

"Confirming telephone conversation of even date in reference to 845 tons kiln-dried Portuguese East African copra packed in bags now on spot at New York.

"The Procter & Gamble Company are willing to purchase this lot at \$110 a ton of 2,000 lbs. F. O. B. cars New York providing we can get proper Government authorization to permit the trade."

The price of \$110 per short ton equals \$123.20 per long ton.

On September 30, 1942, Procter & Gamble withdrew its offer to purchase the copra because the Commodity Credit Corporation had telephoned Procter & Gamble's agent that the Board of Economic Warfare had put an order into effect that no copra could be bought either by the Government or any private firm under licenses at over \$106.25 per long ton (Plaintiff's Exhibit 193, and 1 Tr. 25-34). The Commodity Credit Corporation was without authority to make such a ruling.

Colgate-Palmolive-Peet Company also made a tentative offer to purchase the copra for \$137 per long ton, but this offer was also withdrawn because the Commodity Credit Corporation was offering only \$106.25 (Fdg. 15, R. 13).

From the time this copra arrived in the United States in June 1942, until it was acquired by the Commodity Credit Corporation on October 7, 1942, the copra was in lighters in New York Harbor under tarpaulin exposed to loss by spoilage, and at an expense of approximately \$115 per day (Fdg. 6, 11, R. 8, 12).

On October 2, 1942, plaintiff wrote to the Board of Economic Warfare calling attention to the facts set forth in the preceding four paragraphs and protesting against the action of the Board of Economic Warfare in attempting to fix a price of the copra by pressure exerted upon the prospective purchaser, particularly in view of the fact that plaintiff's applications for compensation for the 1460 long tons of copra (the *S. S. Hawaiian* shipment) were then

pending before the Compensation Board of the Board of Economic Warfare (Fdg. 16, R. 14).

On October 5, 1942, plaintiff telegraphed both the Board of Economic Warfare and the Commodity Credit Corporation as follows (Fdg. 17, R. 14-15):

"Confirm our letter October 2 we are advised that American Union Transport, Inc., and Chemical Bank & Trust Co. being forced sell our 840 tons copra at \$106.25 FOB New York by Miguel Crossnay of Commodity Credit Corporation Stop Strongly protest this sale Stop If pledgees coerced to sell us out at this inadequate and unlawful price will be compelled to seek investigation and reparation before proper tribunal Stop *Again suggest requisition as equitable to all parties concerned.*" (Italics supplied)

In reply to this telegram, Crossnay of the Foreign Purchase Division telegraphed plaintiff as follows (Fdg. 17, R. 14-15):

"Reurtel copra you are mistaken Commodity Credit has no jurisdiction or decision over your copra."

Mr. Holzer, president of American Union Transport, Inc., went to Washington on October 6, 1942, and reported to the Head of the Requisitioning Division of the Board of Economic Warfare the offers to purchase the copra and the difficulties encountered and asked what formalities would have to be complied with in order to permit the private sale. Thereupon, Major Malloy, head counsel for the Requisitioning Division of the Board of Economic Warfare, told Holzer that if he wished to avoid difficulty and further delay, it would be best for him to sell the copra to the Commodity Credit Corporation. Major Malloy stated that representatives of the Board of Economic Warfare had had certain discussions with the Commodity Credit Corporation

and that said corporation would pay \$106.25 per long ton (Fdg. 18, R. 15).

Thereupon Holzer, faced with the possibility of loss by spoilage and accruing expense of \$115 per day, said that he would permit Commodity Credit Corporation to acquire the copra at \$106.25 per long ton (Fdg. 19, R. 15).

Major Malloy summoned a Mr. Guider of the staff of the Legal Department of the Requisitioning Division of the Board of Economic Warfare, and Holzer reported to him that he was ready to deliver the copra to the Commodity Credit Corporation at \$106.25 per long ton (Fdg. 19, R. 15).

Thereupon, Guider, of the Requisitioning Division, dictated to a stenographer in the Requisitioning Division of the Board of Economic Warfare a letter addressed to the Board of Economic Warfare and which was transcribed by the stenographer on plain paper supplied by the Requisitioning Division (Fdg. 20, R. 15-16). This letter was as follows (Fdg. 20, R. 15-16):

"This is to advise you that we are now prepared to sell to you or to the Commodity Credit Corporation the copra which is now being stored in lighters of the Manhattan Lighterage Corporation, 17 Battery Place, New York.

"We hold negotiable receipt issued by the Manhattan Lighterage Corporation on this copra and are prepared to sell it to you at \$106.25 per long ton."

Holzer signed this letter in the Requisitioning Division of the Board of Economic Warfare and then inquired whether he should communicate with the Commodity Credit Corporation and negotiate with it relative to the sale. Guider told Holzer that such negotiation was not necessary, that Patten, another employe of the Board of Economic Warfare, and he had made arrangements for the sale. Guider directed Holzer to return to the hotel where he was staying and await a call which would advise him of further

procedure. The letter which Holzer had signed was left with Guider (Fdg. 20, R. 15-16).

Guider took the letter which Holzer had signed to the office of Crossnay, an official of the Commodity Credit Corporation (1 Tr. 39). Guider had theretofore discussed this particular copra with Crossnay and when he took Holzer's letter to Crossnay he asked Crossnay whether he still wanted the copra (1 Tr. 39).

Crossnay on the previous day had received the plaintiff's telegram of October 5, 1942 (Fdg. 17, R. 14-15), protesting against the sale of the copra at \$106.25 a ton and knew that the copra Guider was referring to was the same as that referred to in plaintiff's telegram (Tr. p. —). Crossnay had known at least two days before the proposed sale of the copra to Commodity Credit Corporation that plaintiff was objecting to the sale of the copra to the Commodity Credit Corporation. He was willing to acquire the copra regardless of plaintiff's protests (1 Tr. 43-45).

The arrangement by which the Commodity Credit Corporation acquired plaintiff's copra from American Union Transport, Inc., was never discussed by Holzer or any other person connected with American Union Transport, Inc., with the Commodity Credit Corporation (1 Tr. 38).

Holzer waited at the hotel several hours and in the afternoon Guider, of the legal staff of the Requisitioning Division of the Bureau of Economic Warfare, telephoned him that negotiations for the sale of the copra could not be completed until the next day (Fdg. 20, R. 15-16).

On October 7, 1942, Guider telephoned Holzer at 11 o'clock and directed Holzer to see him at 1 o'clock. At the appointed time, Holzer saw Guider (Fdg. 21, R. —), who gave him a letter from the Commodity Credit Corporation dated October 7, and which letter is as follows (Fdg. 21, R. 16-17):

"This is to confirm arrangements made with your firm through the *Requisitioning Division of Board of*

Economic Warfare (Mr. A. R. Guider) whereby we have purchased from you approximately 840 long tons (14,020) bags of Portuguese East African origin copra at the price of \$106.25 per 2240 pounds f.o.b cars New York.

“This copra is now in lighters and to be discharged at pier No. 84, New York, and to be loaded at once into cars.

“Please present a full set of documents, including negotiable receipt of the Manhattan Lighterage Company for the full quantity, to our New York Regional Office at 60 Beaver Street, New York City. This office will pay you 95 percent against these documents, and the remaining 5 percent after receipt of official weight certificates, as to the quantity loaded into the railroad cars, less the weight of the bags—this figure will be forwarded to us by the crushers of the copra.

“We are sending you this letter in triplicate, and should appreciate having you return two signed copies to us, thus signifying your acceptance of these terms and conditions.” (*Italics supplied*)

After consulting his attorney by telephone, Holzer agreed to the Commodity Credit Corporation's proposal. Because Guider wished assurances that liens on the copra would be satisfied, Holzer signed another letter which was dictated by Guider and written on plain paper in the office of the Requisitioning Division of the Board of Economic Warfare. This letter was left with the Requisitioning Division (Fdg. 21, R. 16-17).

On October 8, 1942, American Union Transport, Inc., wrote to the United States Department of Agriculture which operated the Commodity Credit Corporation and requested instructions as to the shipment of the copra (Fdg. 22, R. 17). In answer to this inquiry, American Union Transport, Inc., received the following letter from the New

York office of the Department of Agriculture (Commodity Credit Corporation) (Fdg. 22, R. 17).

"We confirm our conversation by telephone on October 8, 1942, regarding approximately 840 long tons Portuguese East African copra under our Purchase 1468. This material was bought at \$106.25 per ton of 2240 pounds f.o.b. cars New York.

"Please load this copra into cars and ship freight collect on an order bill of lading to Baltimore, Maryland, *notify Procter & Gamble Company.*

"Present your invoice in triplicate with bills of lading in duplicate, weight certificate by a certified weighmaster at New York and certificate of analysis to us at 60 Beaver Street, New York, New York. Your invoice should carry the following certification signed by an officer of your company authorized to sign for the company: 'This is to certify that the above invoice is correct and just and that payment therefor has not been received.' " (*Italics supplied*)

The copra was shipped by American Union Transport, Inc., in accordance with these instructions (Fdg. 22, R. 17).

At the time arrangements were made by which Commodity Credit Corporation acquired the copra from American Union Transport, Inc., American Union Transport, Inc., advised the Commodity Credit Corporation that it had only a lien upon the copra, but was not the owner thereof (R. —).

The Commodity Credit Corporation had prior to this occasion, dealt with the owner of the equity in the commodities. In fact the acquiring of plaintiff's copra from American Union Transport, Inc., was probably the first case in which the Commodity Credit Corporation had made a purchase of commodities from a lien holder (1 Tr. 49-60).

American Union Transport, Inc., received \$83,477.78 for the copra (Fdg. 23, R. 17).

Commodity Credit Corporation sold this copra to Procter & Gamble Company at the same price paid for it (Fdg. 23, R. 17).

The plaintiff sold copra only in the foreign market and the copra for which compensation is sought herein was brought to the United States *in transit* for sale in South America (Fdg. 24, R. 18).

When the copra involved herein arrived in New York, petitioner had contracts for the sale of more copra than it could supply at \$182.00 and \$196.36 per long ton f.o.b. New Orleans (Fdg. 25, R. 18).

The petitioner urged in the court below that the facts in the case demonstrate that the agencies of the respondent had deliberately placed the petitioner and its lienor in a position which prevented them from selling the copra either in the export market or the domestic market and subjected them over a long period of time to the hazard of complete loss of the copra by spoilage and the accumulation of large carrying charges, until the lienor was forced to go through the forms of a sale of the copra to the Commodity Credit Corporation through the efforts of the Board of Economic Warfare, which was a requisitioning agency of the defendant.

The Court of Claims held that there could "be no doubt that the sale of this copra to the Commodity Credit Corporation was made under pressure," but the court stated that this pressure fell short of coercion because "defendant merely chose to sit back and let economic forces do their work, whether inadvertently or from design * * *." The court, therefore, dismissed the petition in that court (R. 21).

Statutes Involved

Section 250, Title 28, Code of Laws of the United States of America (Section 1 of the Act of March 3, 1887, c. 359, 24 Stat. 505; as amended by Section 145 of the Act of March 3, 1911, c. 231, 36 Stat. 1136):

“The Court of Claims shall have jurisdiction to hear and determine the following matters:

“(1) *Claims against United States.* First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as ‘war claims’, or to hear and determine other claims which, prior to March 3, 1887, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.”

Section 2 of the Act of October 10, 1940, c. 836, 54 Stat. 1091; Section 712, Title 50, Appendix, Code of Laws of the United States of America:

“Whenever the President shall requisition and take over any article or material pursuant to the provisions of this Act, the owner thereof shall be paid as compensation therefor such sum as the President shall determine to be fair and just. If any such owner is unwilling to accept, as full and complete compensation for such article or material, the sum so determined by the President, such owner shall be paid 50 per centum of the sum

so determined by the President and shall be entitled to sue the United States for such additional sum as, when added to the sum already received by such owner, such owner may consider fair and just compensation for such article or material, in the manner provided by sections 41 (20) and 250, Title 28, of the Code of Laws of the United States of America: *Provided*, That recovery shall be confined to the fair market value of such article or material, without any allowance for prospective profits, punitive or other damages."

Question Presented

Did the respondent acquire plaintiff's copra through the form of a sale thereof which was induced by coercion and threats practiced upon plaintiff and its lienor by respondent's agencies; and, if so, is plaintiff entitled to a judicial determination as to whether the price paid by respondent for the copra constituted just compensation, and to a judgment for such amount as will be just compensation, if the amount paid is determined not to be such?

II

Reasons and Errors Relied Upon for the Allowance of the Writ

It is respectfully submitted that this Court should grant the writ of certiorari and review the decision of the United States Court of Claims for the following reasons:

1. The lower court erred in not deciding and holding that the facts demonstrate a deliberate and studied plan by the Board of Economic Warfare and the Commodity Credit Corporation to acquire plaintiff's copra at respondent's own price in a manner which would not preserve to the plaintiff an opportunity to secure a judicial review of the fairness of the price as just compensation; and that to carry out this plan the Board of Economic Warfare, the

War Production Board, and the Commodity Credit Corporation prevented the plaintiff from selling its copra either in the domestic or foreign market and by implied threats of delay and difficulty, which would result in the spoilage of the copra and the accumulation of large carrying charges, forced a sale of the copra to the Commodity Credit Corporation.

2. The lower court erred in not holding and deciding that the plaintiff's lienor was coerced into selling plaintiff's copra to the Commodity Credit Corporation.

3. The lower court erred in not holding and deciding that the manner in which respondent's agencies acquired petitioner's copra constituted a taking of petitioner's copra for public use and petitioner may sue in the Court of Claims for a determination of what constitutes just compensation for its copra.

4. The lower court erred in failing to hold and decide that petitioner is entitled to recover \$181.61 per long ton for its copra less the amount paid therefor by the Commodity Credit Corporation.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Claims, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a transcript of the record and of the proceedings in the case numbered and entitled on its docket Number 45,989, *Foreign Trade Management Company, Incorporated*, Plaintiff, v. *United States of America*, Defendant, and that said judgment of the United States Court of Claims may be reversed by this Honorable Court with directions to award judgment to the petitioner in the sum of \$152,552.40, less \$83,477.78, or a total sum of

\$69,074.62, with interest at 4% from October 6, 1942, representing just compensation for petitioner's copra, and that your petitioner may have such other and further relief as to this Honorable Court may seem meet and just.

FOREIGN TRADE MANAGEMENT
COMPANY, INCORPORATED,
By DEAN HILL STANLEY,
Counsel for Petitioner,
910 Shoreham Building,
Washington, D. C.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 731

**FOREIGN TRADE MANAGEMENT COMPANY,
INCORPORATED,**

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI**

I

Opinion of the Court Below

The opinion of the United States Court of Claims is reported at 109 Ct. Cl. 587, and will be found at page 19 of the record.

II

Jurisdiction

The date of the judgment to be reviewed is December 1, 1947, (R. 22). On December 23, 1947, the Chief Justice of the United States ordered the time for filing the petition for

writ of certiorari extended to and including April 15, 1948 (R. 25; Act of February 13, 1925, Sec. 8, c. 229, 43 Stat. 940; Sec. 350 U. S. Code, Title 28).

The jurisdiction of this Court is invoked under the provisions of Sec. 3(b) of the Act of February 13, 1925, c. 229, 43 Stat. 939, as amended by the Act of May 22, 1939, c. 140, 53 Stat. 752; Title 28, Sec. 288, U. S. Code.

III

Statement of the Case

Because the case has been fully stated in the petition for writ of certiorari, *supra*, to avoid repetition, a statement of the case is omitted in this brief.

IV

Question Involved

Did the respondent acquire petitioner's copra through the form of a sale thereof which was induced by coercion and threats practiced upon petitioner and its lienor by respondent's agencies; and, if so, is petitioner entitled to a judicial determination as to whether the price paid by respondent for the copra constituted just compensation, and to a judgment for such amount as will be just compensation, if the amount paid is determined not to be just compensation?

V

Specification of the Errors to Be Urged

1. The United States Court of Claims erred in holding and deciding that the respondent did not acquire petitioner's copra as a result of the coercion exercised upon petitioner and its lienor and that the contract between petitioner's lienor and the Commodity Credit Corporation determined the rights of the parties.

2. The United States Court of Claims erred in not deciding and holding that the Board of Economic Warfare and the Commodity Credit Corporation acquired petitioner's copra by the use of coercive methods against the petitioner and its lienor to compel the lienor to go through the form of a sale of the copra to the Commodity Credit Corporation.

3. The United States Court of Claims erred in not deciding and holding that the sale of petitioner's copra to the Commodity Credit Corporation was void because induced by the exercise of coercion upon the petitioner's lienor.

4. The United States Court of Claims erred in not deciding and holding that the acquiring of petitioner's copra by the Commodity Credit Corporation constituted a taking of petitioner's property for public use for which petitioner is entitled to recover just compensation in the United States Court of Claims.

5. The United States Court of Claims erred in failing to decide and hold that petitioner is entitled to recover \$181.61 per long ton for its copra, less the amount paid therefor by the Commodity Credit Corporation, or \$152,552.40 less \$83,477.78, or a total sum of \$69,074.62.

VI

ARGUMENT

A

The Respondent Acquired Petitioner's Copra at Its Own Price by the Exercise of Coercion Upon Petitioner and Its Lienor and Petitioner Is Entitled to Recover a Judicially Determined Just Compensation for the Copra

The facts upon which petitioner relies to demonstrate that its copra was acquired by the respondent through its agencies, the Board of Economic Warfare and the Commodity

Credit Corporation, by the exercise of coercion, have been related in detail in the statement in the petition for writ of certiorari. Only a summary of the points which these facts demonstrate is required in the argument of the case.

In 1941 petitioner purchased 2500 long tons of copra in Portuguese East Africa (Fdg. 2, R. 6). This copra was brought to the United States in three ships, in transit, for sale in South America (Fdg. 24, R. 18). Petitioner sold copra only in the foreign market (*ibid*).

The first portion of the copra, 1460 long tons, arrived in the United States in May, 1942 (Fdg. 2, R. 6) and was formally requisitioned by the respondent through the Requisitioning Division of the Board of Economic Warfare (Fdg. 4, R. —), and petitioner was awarded by that Board \$106.25 per long ton. The Court of Claims has allowed \$145.00 per long ton for this copra and the sufficiency of this award is before this Court in the companion case Number 730.

Another 840 tons of the copra which petitioner had purchased arrived in the United States in June, 1942, on two other vessels (Fdg. 2, R. 6).

Respondent did not formally requisition the 840 long tons (Fdg. 4, R. 7) but refused to issue export licenses permitting petitioner to ship the copra to South American customers with whom petitioner had contracts (Fdg. 25, R. 18).

Petitioner was compelled to unload the copra into lighters in New York Harbor, in which it continued to remain for over three months, where it was subject to spoilage and accruing charges of \$115.00 per day (Fdg. 6, R. 8), until it was acquired by the Commodity Credit Corporation (Fdg. 3, R. 6-7).

Petitioner and its lienor repeatedly endeavored to secure permission to export the copra and, failing in that, sought

to obtain permission from the War Production Board to sell the copra in the domestic market (Fdgs. 10 to 13, R. 11-13). General Imports Order M-63 of that Board restricted the use and disposition of copra imported under contracts made prior to the effective date of the Order (Fdg. 10, R. 11-12).

When petitioner's lienor sought to obtain a license from the War Production Board (Plaintiff's Exhibits 85, 86, and 87) to sell in the domestic market, petitioner's lienor was advised that the matter had been referred to the Requisitioning Division of the Board of Economic Warfare (Fdg. 12, R. 12). This was the organization that had previously requisitioned the 1460 long tons of copra.

Petitioner and its lienor made other efforts to sell the copra but these were frustrated by the Commodity Credit Corporation advising the purchasers that copra could not be sold in the domestic market for more than \$106.25 per long ton (Plaintiff's Exhibit 93, and 1 Tr. 25-34). The Commodity Credit Corporation had no authority to make such a statement as no such order had been put into effect.

After more than three months of delay, while the copra was being eaten up by accruing charges and subject to spoilage, the lienor, through its president, sought to obtain permission to sell the copra and went to Washington to confer with the Requisitioning Division of the Board of Economic Warfare. There he was told that if he wished to avoid difficulty and further delay, it would be best for him to sell the copra to the Commodity Credit Corporation (Fdg. 18, R. 15).

Faced with the possibility of loss by spoilage and accruing expense of \$115.00 per day, the president of the lienor said he would permit the Commodity Credit Corporation to acquire the copra at \$106.25 per long ton (Fdg. 19, R. 15).

From then on, the Requisitioning Division of the Board

of Economic Warfare handled the transaction, drew the contract for transfer of the copra to the Commodity Credit Corporation, and secured the signatures from the parties without any contact between petitioner's lienor and the Commodity Credit Corporation (Fdgs. 20 and 21, R. 15, 17).

The Commodity Credit Corporation, over petitioner's protest, (Fdg. 17, R. 14-15) acquired the copra. The letter confirming the arrangements stated that they had been made through the Requisitioning Division of the Board of Economic Warfare (Fdg. 21, R. 16). This was the division which had requisitioned the first portion of petitioner's copra which had arrived in May, 1942.

Respondent had permitted petitioner to bring the copra to the United States and in fact had prevented it from unloading the copra at Trinidad, B. W. I., for reshipment to petitioner's South American customers. When petitioner had shipped the copra from Portuguese East Africa, it had export licenses permitting its export from the United States (1 Tr. 14-15). These, however, had been cancelled (1 Tr. 14-15) by the respondent. After petitioner had brought its copra to the United States, respondent refused to permit it to export the copra, and the War Production Board did not act upon the lienor's application for permission to sell the copra in the domestic market but referred it to the Requisitioning Division of the Board of Economic Warfare where ultimately the lienor's president was told that if he wished to avoid difficulty and further delay it would be best for him to sell the copra to the Commodity Credit Corporation with which the Board of Economic Warfare had already held discussions as to the purchase of the copra.

It must be borne in mind that petitioner's copra had at this point been on lighters for three months, subject to spoilage and accruing charges.

This conduct of the respondent clearly constituted coercion and it was because of such coercion that the Commodity Credit Corporation was enabled to acquire petitioner's copra at its own price.

It must be observed continuously that the Board of Economic Warfare could have acquired this copra by the usual methods of requisition which would have left petitioner an opportunity in the Court of Claims to test the sufficiency of the award upon requisition. Instead of following this simple, legal, and equitable method, the Board of Economic Warfare chose to force the petitioner and its lienor to relinquish its copra for a price at which the Court of Claims in the companion case before this Court has held was inadequate.

The Court of Claims held that the action of the respondent's agencies did not constitute coercion. The Court stated that there could "be no doubt that the sale of this copra to the Commodity Credit Corporation was made under pressure, but "Defendant", the Court said, "merely chose to sit back and let economic forces do their work, whether inadvertently or from design," the Court did not know (R. 21).

It is respectfully submitted that the facts in this case go much further than a negative inaction by respondent. The respondent was active in seeing to it that petitioner was not permitted to dispose of its copra either in the domestic market or the foreign market and when the situation had become critical, it suggested the sale to the Commodity Credit Corporation *if further difficulty and delay were to be avoided* (Fdg. 18, R. 15). This was clearly an implied threat and it was this that finally brought the lienor to accede to the respondent's desires.

When property is acquired for public use, this Court has considered the substance of the manner of acquiring and

not the form, *International Paper Company v. United States*, 282 U. S. 399.

B

Petitioner Is Entitled to Recover the Export Price of Its Copra at the Time of Requisition, Which Was \$182.00 Per Long Ton, F. O. B. New Orleans.

Petitioner sold copra only in the foreign market and the copra for which compensation is sought herein was brought to the United States, in transit, for sale in South America (Fdg. 24, R. 18).

Petitioner is, therefore, entitled to recover as just compensation for its copra the export market price, *United States v. New River Collieries Company*, 262 U. S. 341.

When petitioner's copra arrived in the United States shortly before its requisition, petitioner had contracts for the sale of more copra than it could supply at \$182.00 and \$196.36 per long ton F. O. B. New Orleans (Fdg. 25, R. 18).

The Court of Claims found that during 1942 the price of \$145.00 per long ton was readily obtainable on the South American market (Fdg. 29, R. 19). The price of copra had steadily risen from \$135.00 per long ton in October, 1941 (Fdg. 26, R. —) to the price petitioner was obtaining in the middle of 1942, and continued to rise so that during 1944 petitioner was selling copra in the foreign market for \$240.00 to \$245.00 per long ton (Fdg. 28, R. 19). During 1942 the Government issued licenses for the shipment of one thousand tons of copra to Columbia at \$240.00 per long ton (Fdg. 28, R. 19).

The fair export value of petitioner's copra was what it could secure for it on the foreign market which, as the Court of Claims found, was a minimum of \$182.00 per long ton. By the methods used by the Requisitioning Division of the Board of Economic Warfare, which are under attack in this

case, the respondent obtained petitioner's copra from the lienor at only \$106.25 per long ton.

Conclusion

It is respectfully submitted that the foregoing demonstrates the following points:

1. That the respondent acquired petitioner's copra at an inadequate compensation through the use by the Requisitioning Division of the Board of Economic Warfare and the Commodity Credit Corporation of illegal, coercive methods.

2. That the so-called sale of petitioner's copra to the Commodity Credit Corporation should be declared void.

3. That the case should be remanded to the Court of Claims with instructions to award petitioner a judgment for its copra at the rate of \$182.00 per long ton, less the amount received from the Commodity Credit Corporation, to-wit; \$152,552.40 less \$83,477.78, or a total sum of \$69,074.62, with interest at 4% from October 6, 1942.

Respectfully submitted,

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